



2001-014-863

June 27, 2001

General Services Administration
FAR Secretariat (MVR)
1800 F Street, NW, Room 4035
Attn: Laurie Duarte
Washington DC 20405

Re: FAR Case 2001-014

Dear Ms. Duarte:

On behalf of Eastman Kodak Company ("Kodak"), I appreciate the opportunity to comment on FAR Case 2001-014, which seeks to revoke the December 20, 2000 final rule on Contractor Responsibility, Labor Relations Costs, and Costs Relating to Legal and Other Proceedings. As you may know, Kodak is the leading manufacturer of photographic, digital and other imaging products. Kodak employs over 40,000 people in the United States, and has over 80,000 employees worldwide. In addition, Kodak supplies important goods and services to the Federal Government. Our Commercial and Government Systems Division employs approximately 1300 people who are devoted primarily to the development of advanced imaging technology products and services to the Federal Government.

Kodak strongly supports the revocation of this rule. We have deep concerns regarding the proposed additions to sections 9.104-1 and 9.104-3. In summary, these sections appear to vest virtually unlimited discretion in contracting officers to deem contractors "unqualified" based on a single, unproven allegation that the contractor has violated any federal law. Furthermore, even if contracting officers were limited to considering only final court or administrative determinations, the regulations lack any standards that would guarantee fair and uniform treatment of all contractors by the many contracting officers who would be given nearly unlimited discretion to implement these regulations. Without such standards, inconsistent and arbitrary decisions are inevitable.

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The regulations appear to be an inappropriate attempt to dramatically increase the penalties for any given violation of a federal law. It is for Congress to set penalties when such laws are enacted, usually after much debate and compromise. Within limits set by Congress, administrative agencies, judges and juries impose penalties for violations after all relevant evidence is heard and evaluated. These elements of due process help to ensure that a proportionate penalty is imposed upon those who may violate a federal law. Once a judgment is final, imposing additional penalties violates the statutory scheme.

The proposed regulations also fail to distinguish between habitual law-breakers and a contractor that may, on occasion, be found in violation of a particular law or regulation, despite its compliance with tens of thousands of other state and federal laws and regulations. Federal environmental regulations alone cover more than 14,000 pages in the CFR. Even the best-intentioned company can be found to have violated the law, particularly given the vagueness of many statutes and regulations.

Perhaps the least defensible aspect of the proposed regulations is section 9.104-3 (c) which empowers a contracting officer to "consider all relevant credible information" regarding a contractor's compliance with federal laws. While this part of the regulation indicates that contracting officers should "give greatest weight" to convictions or civil judgments within the past three years, it does not limit the contracting officer to consideration of such judgments. Subsection (c) would allow the consideration of non-final administrative decisions, the mere issuance of a complaint by a federal agency, or even a simple accusation by an individual.

In effect, the regulations allow a contracting officer to impose the most extreme penalty imaginable -- debarment -- merely because a complaint has been filed, or an allegation has been made, against the contractor. Yet most of these complaints will result in either decisions in the contractor's favor, or a

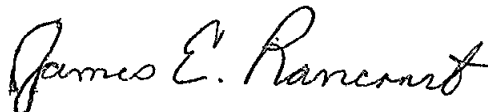
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settlement without any finding of liability. Moreover, the debarment of a contractor does not just affect a corporate entity and its shareholders. Debarment could have a catastrophic impact on hundreds or thousands of employees of a single contractor whose jobs may depend on business with the federal government. Such a result is not just plainly unfair, but undermines Congress's authority to set appropriate penalties for statutory violations.

The FAR Council indicated earlier that the primary benefit of this new regulation would be the added clarity it provides the procurement community. However, many within industry and the government provided comments that the rule was unnecessary and could potentially cost hundreds of millions of dollars each year to implement. In Kodak's view, any such perceived benefits are outweighed by the significant cost these requirements overlay on both government and industry.

For all of these reasons, we urge that the FAR Council to revoke the proposed Contractor Responsibility regulations. Using the existing regulations to enforce the Suspension and Debarment process is a more efficient means of enforcing the laws implicated by this rule. If you need any information or have questions please contact Mr. Stanley Fry, Director, Contracts and Legal Affairs, Commercial & Government Systems at (716) 253-6116.

Very truly yours,



James E. Rancourt
Director
Labor Relations & Employee Svcs.

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